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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 98

CHARLES ROBERT ANDERS,

Petitioner,

—VS.—

CALIFORNIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

REPLY BRIEF FOR PETITIONER

Respondent's primary argument is that equal protection and due process requirements are met by the California procedure because an indigent is only deprived of support of counsel on appeal when (a) appointed counsel, after conscientious investigation as an advocate, concludes that the appeal has no merit and (b) the court itself studies the full record and researches the law before affirming the conviction.

Respondent's argument is based on three assumptions. First, that counsel will act as a conscientious advocate. Second, that the appellate court's review of the record will

if he concludes that there is no merit the appellate court proceeds to determine the appeal on the merits without counsel representing the indigent whether or not the indigent's points are frivolous.

Respondent ingeniously argues that under the District of Columbia practice an indigent has both the government and his own appointed defense counsel advocating against him when appointed attorney files a memorandum to show why the case has no merit. Respondent states that: "It is difficult to see how such a system encourages advocacy" (Resp.'s Brief, p. 28). Respondent's point is sounder theoretically than practically. The District of Columbia procedure encourages advocacy on the merits because it imposes substantial obstacles to attorney withdrawals. This is where the California practice fails.

In any event, the District of Columbia practice is not urged necessarily as a constitutional solution. It is cited primarily to show concern by a highly respected court and what seems to that court a practical alternative to balance, on the one hand, protection of indigents on appeal and, on the other, the professional duty of lawyers not to burden the courts with frivolous cases. It might well be, as suggested in the brief of the State of Iowa in the companion case to the instant one, *Entsminger* v. *Iowa,* No. 252, that a motion for leave to withdraw should be made to the trial court which, if the motion is granted, should appoint another attorney.

Respectfully submitted,

IRA MICHAEL HEYMAN
Counsel for Petitioner

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